

Exhibit C

FILED

OCT 19 2005

CAROLINE M. WEAVER
DELAWARE CO. COURT CLERK

**IN THE DISTRICT COURT OF DELAWARE COUNTY
STATE OF OKLAHOMA**

**JOEL J. REED, RHONDA REED, JIM L.
PIGEON, MICHELLE R. PIGEON,
KENNETH GLENN, FRANKLIN GLENN,
JULIE ANDERSON CHANCELLOR and
BILL ANDERSON,**

Plaintiffs,

v.

**STATE OF OKLAHOMA, Ex Rel THE
DEPARTMENT OF AGRICULTURE,
FOOD AND FORESTRY,**

Defendant.

Case No. *CV-2005-569*

**PETITION FOR DECLARATORY JUDGMENT, TEMPORARY RESTRAINING
ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Plaintiffs Joel J. Reed, Rhonda Reed, Jim L. Pigeon, Michelle R. Pigeon, Kenneth Glenn, Franklin Glenn, Julie Anderson Chancellor, and Bill Anderson (collectively, "Plaintiffs"), pursuant to the Declaratory Judgments Act, Okla. Stat. tit. 12, § 1651 et seq., for their claims against the State of Oklahoma, ex rel the Department of Agriculture, Food and Forestry (the "ODAFF") state as follows:

PARTIES, JURISDICTION AND VENUE

1. Joel Reed and Rhonda Reed (the "Reeds") are individuals and residents of Delaware County.
2. Jim L. Pigeon and Michelle R. Pigeon (the "Pigeons") are individuals and residents of the State of Arkansas.

3. Kenneth Glenn and Franklin Glenn (the "Glenns") are individuals and residents of Delaware County.

4. Julie Anderson Chancellor ("Chancellor") is an individual and resident of Delaware County.

5. Bill Anderson ("Anderson") is an individual and resident of Delaware County.

6. At all relevant times, the State of Oklahoma, Ex Rel the Department of Agriculture, Food and Forestry, through its agents and employees acted as described below.

7. This Court has jurisdiction over the parties and the subject matter of this action.

8. Venue is proper in Delaware County.

FACTS

9. Plaintiffs own and operate poultry farms located in Delaware County, Oklahoma. As part of their farming operations, chickens are raised on Plaintiffs' farms. Plaintiffs use some of the resulting chicken litter as fertilizer on their farms.

10. Plaintiffs' farms are registered under the Oklahoma Registered Poultry Feeding Operations Act ("ORPFOA"). Plaintiffs' farms are in compliance with their Nutrient Management Plan required by the ORPFOA.

11. On May 3, 2005, some of the Plaintiffs and/or their representatives, along with other poultry growers, met with Dan Parrish, Director the Agricultural Environmental Management Services ("Mr. Parrish") and Terry L. Peach, the Commissioner of Agriculture ("Commissioner Peach") to discuss soil and litter sampling requests that had been made by the ODAFF.

12. Following this meeting, on May 18, 2005, Mr. Parrish sent a Memorandum, along with a two page "Considerations Requested by Poultry Operations at the May 3, 2005 meeting at

Kansas, Oklahoma.” Mr. Parrish therein requested that Plaintiffs volunteer to have their properties tested for numerous substances.

13. Plaintiffs consider themselves good stewards of their land, and are proud of their reasonable and prudent use of poultry litter to enhance the productivity of their farms. As a result, by letter dated May 23, 2005, Plaintiffs advised that they would be pleased to voluntarily allow the ODAFF to sample their fields to determine the soil concentration of the fertilizer nutrients over which the ODAFF has regulatory authority.

14. The “nutrients” over which the ODAFF has authority are: nitrogen; phosphate; potash; calcium; magnesium; sulfur; boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc (“Nutrients”) See Okla. Stat. tit. 2, § 8-77.11 (2004); Oklahoma Agricultural Code (“OAC”), §§ 35:30-29-22(a) and (b). The ODAFF is not authorized to test for any other substances. See Okla. Stat. tit. 2, §§ 10-9.7(C)(3), (D)(2) and (E)(1)(a) and (b) (2004).

15. Through Mr. Parrish’s May 18, 2005 Memorandum, the ODAFF requested Plaintiffs to agree to sampling and testing beyond its authority. Plaintiffs declined to permit the ODAFF to collect samples and test for any substances for which the ODAFF is not authorized to test.

16. In addition to requesting sampling and testing for substances beyond its authority, the ODAFF proposed to conduct sampling inconsistent with the proper protocol for sampling. The ODAFF proposed that its soil sampling would include a six-inch core taken at each soil sampling location with each of those six-inch cores to be broken into three parts, 0”-2”, 2”-4” and 4”-6”, and each of those separate segments combined and a composite sample analyzed for each segment.

17. The proper protocol for sampling on Plaintiffs' property requires the taking of multiple six-inch cores, combining them on-site and having that single composite analyzed. See OK NRCS Code 590, at 590-2 (Feb. 2004) and OSU Extension Facts publication F-2207. For this reason, Plaintiffs requested that the ODAFF amend its proposed testing regimen for soils to take full-depth (0"-6") cores, combine the cores on-site, and have that single composite analyzed.

18. Plaintiffs advised the ODAFF that they were willing to voluntarily allow the ODAFF to perform its proposed testing regimen, if it was modified to comply with the proper protocol for sampling, even though the ODAFF has no legal authority to require such testing under either the Oklahoma Registered Poultry Feeding Operations Act ("ORPFOA") or the Oklahoma Poultry Waste Applicators Certification Act ("OPWACA").¹

19. Pursuant to the ORPFOA, the ODAFF may investigate "complaints as to the operation or to determine whether there are any violations of the [Act]." Okla. Stat. tit. 2, § 10-9-10(A)(1)(a) (2001).² Here, however, the ODAFF has not advised that it has received any "complaint" concerning any of Plaintiffs' operations. Nor has the ODAFF any reason to believe any of Plaintiffs are violating the ORPFOA. In fact, Plaintiffs believe that they were asked to volunteer precisely because they are each in compliance with the ORPFOA. Indeed at the meeting on May 3, 2005, Commissioner Peach stated specifically that Plaintiffs' farms were selected for sampling because said farms are in compliance with their Nutrient Management Plans.

¹ The OPWACA, at 2 O.S. 2001 § 10-9-20(C), authorizes the ODAFF to "take samples of poultry waste and soil at application sites in order to determine their concentration." However, the OPWACA does not set any standards or define any terms. Those are established elsewhere.

² Similarly, 2 O.S. 2001 § 2-14(B) authorizes the ODAFF to conduct investigations to determine compliance with the Oklahoma Agriculture Code. Here, the only pertinent parts of the Agriculture Code are the ORPFOA and the OPWACA.

20. At the May 3, 2005 meeting, Commissioner Peach handed out a two-page "Summary of Agency Authority for Sampling." Included in that Summary is the ODAFF's authority to enforce Oklahoma's water quality standards. See Okla. Stat. tit. 27A, § 1-3-101(D)(1)(h) (2005 Supp.). However, there has not been any allegation that Plaintiffs have violated any specific water quality standard applicable to any water body. Accordingly, the ODAFF's authority to enforce water quality standards simply is not applicable. See Okla. Stat. tit. 27A, § 1-3-101(D)(h) (2004 Supp.).³

21. On October 18, 2005, Plaintiffs and/or their properties were each named in Statutory Administrative Warrants Allowing Entry to Perform Sampling issued on October 18, 2005 in Cases No. CV-05-563 through 566 (the "Warrants").⁴

22. Based on the ODAFF's previous representations, Plaintiffs believe that the ODAFF plans to take samples from Plaintiffs' properties (a) for an unauthorized purpose, (b) by using an improper and unreliable sampling protocol, (c) which said samples will be tested for substances other than Nutrients within the ODAFF's authority, and (d) that such actions are in contravention of Plaintiffs' rights.

23. Based on the ODAFF's previous representations, Plaintiffs believe that the ODAFF plans to take up to 320 samples per ten acres of property. Such activities are far more intrusive and onerous than the Legislature contemplated when it authorized the ODAFF to have access to farmers' lands to protect health and safety of the public. In addition and as discussed hereafter, such activities at this particular time of potential cross-contamination of farms, is simply without justification.

³ The ODAFF has not promulgated any rules implementing this authority.

⁴ Warrant No. CV-05-363 names Julie Anderson, but the property described in the warrant belongs to her father, Bill Anderson. No warrant was issued to Bill Anderson.

24. Plaintiffs have recently discovered that there is an outbreak of “LT” disease, more specifically “Laryngotracheitis,” near Plaintiffs’ farms. LT disease is a contagious disease of chickens and related birds that can cause high levels of illness or death in a poultry flock within a short period of time. Although the disease is not harmful to humans, it is easily transported by human activities such as walking over or driving vehicles over soil contaminated with the disease. Because of this recent outbreak of “LT” disease, and its serious consequences, it has become necessary for Plaintiffs to institute strict biosecurity in an effort to prevent the spread of “LT” disease. The sampling planned by the ODAFF poses a threat to the necessary biosecurity and may contribute to the spread of “LT” disease to and/or among Plaintiffs’ farms, through other parts of Delaware County and elsewhere.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

25. Plaintiffs adopt and reallege Paragraphs 1 through 24 of their Petition.

26. For its First Claim for Relief against the ODAFF, Plaintiffs seek declaratory relief, pursuant to the Declaratory Judgments Act, Okla. Stat. tit. 12, § 1651 et seq.

27. At this time, based upon the issuance of the Warrants, there exists an actual and justiciable controversy between Plaintiffs and the ODAFF involving the parties’ rights, authority, and/or obligations pursuant to the Oklahoma Agricultural Code, the Oklahoma Registered Poultry Feeding Operations Act, and the Oklahoma Poultry Waste Applicators Certification Act.

28. Plaintiffs request a declaratory judgment that the above-referenced laws do not authorize the ODAFF to conduct the sampling and testing planned by the ODAFF.

29. To the extent that the ODAFF purports to rely on “rules,” which have yet to be promulgated, Plaintiffs request a declaratory judgment that reliance on such rules would constitute a denial of Plaintiffs’ right to due process.

SECOND CLAIM FOR RELIEF
(Injunctive Relief)

30. Plaintiffs adopt and reallege paragraphs 1 through 29 of its Petition.

31. For its Second Claim for Relief against the ODAFF, Plaintiffs seek a temporary restraining order and/or a preliminary injunction enjoining the ODAFF from (a) entering their property to perform any sampling until the LT outbreak is resolved; (b) using any sampling protocol other than that authorized by OK NRCS Code 590 or OSU Extension Facts Publication F-2207; and (c) testing any samples for substances other than “nutrients” as defined in OAC §§ 35:30-29-22(a) and (b).

WHEREFORE, Plaintiffs pray that judgment be entered in their favor against Defendant on their claim for declaratory judgment, and respectfully request that this Court enter issue a temporary restraining order and/or preliminary injunction enjoining Defendants from the following activities:

- (A) entering their property to perform any sampling until the LT outbreak is resolved;
- (B) using any sampling protocol other than that authorized by OK NRCS Code 590 or OSU Extension Facts Publication F-2207; and
- (C) testing any samples for substances other than “nutrients” as defined in OAC §§ 35:30-29-22(a) and (b);

and grant Plaintiffs such other relief that the Court deems equitable and just.

Respectfully submitted,

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

By: 

Michael Graves, OBA #3539

D. Kenyon Williams, Jr., OBA #9643

John F. Heil, III, OBA #15904

320 South Boston Avenue, Suite 400

Tulsa, OK 74103-3708

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ATTORNEYS FOR PLAINTIFFS

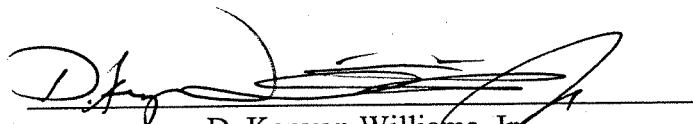
CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on October 19, 2005 a true and correct copy of the above and foregoing *PETITION FOR DECLARATORY JUDGMENT, TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF* was sent by hand-delivery, facsimile and certified mail, return receipt requested, to:

Teena G. Gunter,
Deputy General Counsel
David Leavitt, Counsel
Oklahoma Department of Agriculture,
Food, and Forestry
2800 North Lincoln Boulevard,
Oklahoma City, OK 73105-4298

Commissioner Terry L. Peach
Oklahoma Department of Agriculture,
Food, and Forestry
2800 North Lincoln Boulevard,
Oklahoma City, OK 73105-4298

W. A. Drew Edmonson
Attorney General for the State of
Oklahoma
112 State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105-4894


D. Kenyon Williams, Jr.

STATE OF OKLAHOMA)
COUNTY OF Delaware) ss.

I, Joel J. Reed, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Joel J. Reed
Joel J. Reed

Subscribed and sworn to before me this 19th day of October, 2005.

Michael Spencer Baker
Notary Public

My Commission Expires:

7-12-07
(SEAL)

My Commission Number:

03007945

STATE OF OKLAHOMA)
COUNTY OF Delaware) ss.

I, Rhonda Reed, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Rhonda Reed
Rhonda Reed

Subscribed and sworn to before me this 19th day of October, 2005.

Michael Spencer Baker
Notary Public

My Commission Expires:

7-12-07
(SEAL)

My Commission Number:

03007945

STATE OF OKLAHOMA)
COUNTY OF Delaware) ss.

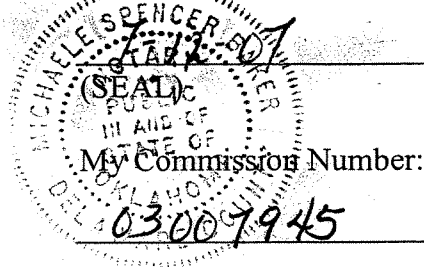
I, Jim L. Pigeon, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Jim L. Pigeon
Jim L. Pigeon

Subscribed and sworn to before me this 19th day of October, 2005

Michael Spencer Baker
Notary Public

My Commission Expires:



STATE OF OKLAHOMA)
COUNTY OF _____) ss.

I, Michelle R. Pigeon, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Michelle R. Pigeon

Subscribed and sworn to before me this 19th day of October, 2005.

Notary Public

My Commission Expires:

(SEAL)
My Commission Number:

STATE OF OKLAHOMA)
COUNTY OF Delaware) ss.

I, Kenneth Glenn, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Kenneth Glenn
Kenneth Glenn

Subscribed and sworn to before me this 19th day of October, 2005.

Michael Spencer Baker
Notary Public

My Commission Expires:
12-07
(SEAL)
My Commission Number:
03007945

STATE OF OKLAHOMA)
COUNTY OF _____) ss.

I, Franklin Glenn of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Franklin Glenn

Subscribed and sworn to before me this 19th day of October, 2005.

Notary Public

My Commission Expires:

(SEAL)

STATE OF OKLAHOMA)
COUNTY OF Delaware) ss.

I, Julie Anderson, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Julie Anderson Chancellor
Julie Anderson

Subscribed and sworn to before me this 19th day of October, 2005.

Michael Spencer Baker
Notary Public

My Commission Expires:

7-12-07
(SEAL)

My Commission Number:

03007945

STATE OF OKLAHOMA)
COUNTY OF Delaware) ss.

I, Bill Anderson, of lawful age, being first duly sworn, state that I have read the foregoing Petition for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, that I am familiar with the contents thereof, and the statements therein contained are true and correct, to the best of my knowledge and belief.

Bill Anderson
Bill Anderson

Subscribed and sworn to before me this 19th day of October, 2005.

Michael Spencer Baker
Notary Public

My Commission Expires:

7-12-07
(SEAL)

My Commission Number:

03007945

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